

United States District Court  
Southern District of Texas  
FILED

DEC 21 2009

IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN  
DISTRICT OF TEXAS – HOUSTON DIVISION

Clark of Court

12:33 pm

IN RE:	§	
NORTHPARK OFFICE TOWER, LP	§	INVOLUNTARY FILING Chapter 11
	§	
Debtor	§	Case No. 09-39205

## MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM


COMES NOW, NORTHPARK OFFICE TOWER, LP and files this their Motion to Dismiss for Failure to State a Claim and would respectfully show the court the following:

Petitioner Kevin Orton is not a creditor to NorthPark Office Tower, LP. Petitioner Kevin Orton claims the nature of the claim to be a guarantee of the amount of \$2,900,321.52. This form of claim does not give Petitioner proper creditor status under § 303 of the bankruptcy code. Petitioner Kevin Orton is the guarantor on a note of that amount due to ERPILE, LLC.

NorthPark requests that Petitioner's involuntary petition be dismissed, that the Court award attorney's fees, costs and all other relief to which NorthPark may be entitled.

Respectfully submitted,

Richard E. Wakeland



Richard E. Wakeland

SBN: 00788912  
2500 West Loop South, Suite 255  
Houston, TX 77027  
713-789-7654  
713-789-3331 facsimile  
Attorney for movant, NorthPark

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above pleading was served on all parties in interest as listed below by depositing the same in the U.S. mail, postage prepaid on the 21 of December, 2009.

  
Richard E. Wakeland

Trustee  
U.S. Trustee  
Office of the Trustee  
515 Rusk Ave., STE 3516  
Houston, TX 77002

Alan Gerger  
Dunn, Neal & Gerger, LLP  
3050 Post Oak Blvd., Ste 400  
Houston, TX 77056

Creditors  
Stephen G. Hunt  
550 Westcott, Suite 350  
Houston, TX 77007

Ciano Pasta  
5718 Westheimer, Suite 940  
Houston, TX 77057

Anthony Nims  
Linebarger Goggan  
1301 Travis, Suite 300  
Houston, TX 77002

Brian Kilmer  
3102 Maple Ave, Suite 450  
Dallas, TX 75201